

# **Basic Principles of Federalism in German Constitutional Law**

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# From Princely States to the German Empire

## Rather federalist structure:

- Heiliges Römisches Reich (*Sacrum Romanum Imperium*) (10<sup>th</sup> century – 1806)
- *Rheinbund* of 36 princely States (1806)
- *Deutscher Bund* (1815)
- *Norddeutscher Bund* (1867): dominated by *Preussen*
- *Deutsches Kaiserreich* (1871)

## Rather centralist structure:

- *Deutsches Reich* (so called *Weimarer Republic*) (1919)

## Centralist structure

- *Deutsches Reich* (1933-45): Fascist dictatorship

# From the German Empire to Modern Germany

## After WW II:

- **Foundation of German States (*Länder*) in occupied Germany**

## Different developments in East and West Germany after 1949:

### Centralist structure:

- **East German Democratic Republic (1949-90)**
- **Reunification/Affiliation (1990)**

### Federalist structure:

- **West German Federal Republic (since 1949)**

# Modern German Constitutions

- **Constitution of the German Empire 1849**  
(*Paulskirchenverfassung*)
- **Constitution of the first Republic 1919**  
(*Weimarer Reichsverfassung*)
- **Nazi-fascist dictatorship 1933-45**
- **Constitution of the German Democratic Republic (1949-90) and**
- **Basic Law/Constitution of the Federal Republic of Germany of 1949 (*Grundgesetz*)**
- **Latter one “confirmed” after German reunification in 1990**

# Federalism in the German Constitution

**Art. 20 – 37: Federation and States (*Bund* and *Länder*)**

**Art. 50 – 53: State Chamber (*Bundesrat*)**

**Art. 70 – 74: Federal Legislation**

**Art. 83 – 91 Execution of Federal Laws by the States and Federal Administration/Emergency**

**Art. 91a – 91e: Joint Tasks of Federation and States**

**Art. 104a – 115: Finances**

## The German States (*Länder*)

- 16 German States of which 3 are „City-States“
- Population varying from 6 lakh to 1.8 crore
- Each *Land* has its own **Constitution**, including provisions on fundamental rights
- „Better“ protection of **fundamental rights** than in the Federal Constitution is permissible
- Each Land has own **Parliament** with full legislative powers within the federal constitutional framework  
[Art. 70 – 74 *Grundgesetz*]
- Each *Land* has **Constitutional Court** with full jurisdiction on State Constitution and Laws
- Protection of **fundamental rights** under Federal Constitution guaranteed only by Federal Constitutional Court

# Constitutional Principles and Right of Resistance

## Article 20 Constitution

- *The Federal Republic of Germany is a **democratic** and **social federal state**.*
- *All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies.*
- *The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice.*
- *All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.*

# Constitutional Order in the 16 States

## Art. 28 Constitution

- (1) *The constitutional order in the Länder must conform to the principles of a **republican, democratic and social** state governed by the rule of law, within the meaning of this Basic Law.*
- (2) [Rights of Municipalities]
- (3) *The Federation shall guarantee that the constitutional order of the Länder conforms to the basic rights and to the provisions of paragraphs (1) and (2) of this Article.*



# Sovereign Powers of States and Execution of Federal Law

## Article 30 Constitution

*Except as otherwise provided or permitted by this Basic Law, the **exercise of state powers** and the discharge of state functions is a matter for the Länder.*

## Article 83 Constitution

*The Länder shall execute federal laws in their **own right** insofar as this Basic Law does not otherwise provide or permit.*

[see also Art. 84-86]

# Supremacy of Federal Law

## Art. 31 Constitution

*Federal law shall take precedence over Land law.*

**[But see Art. 70 – 74 GG on legislative powers]**

# Equal Citizenship

## Article 33 Constitution

**(1) *Every German shall have in every Land the same political rights and duties.***

**[In fact, there is no State citizenship. See also slides on  
Citizenship in Germany]**

# Functions of the *Bundesrat*

## Article 50 Constitution

- (1) *The Länder shall participate through the Bundesrat in the legislation and administration of the Federation and in matters concerning the European Union.*

[with respect to European Union see also Art. 23]

# State Chamber, not Second House of Parliament

## Art. 51 Constitution

- *The Bundesrat shall consist of **members of the Land governments**, which appoint and recall them. Other members of those governments may serve as alternates.*
- *Each Land shall have at least three **votes**; Länder with more than two million inhabitants shall have four, Länder with more than six million inhabitants five, and Länder with more than seven million inhabitants six votes.*
- *Each Land may appoint as many members as it has votes. The **votes** of each Land may be **cast only as a unit** and only by Members present or their alternates.*

# Division of Legislative Powers Between Federation and States

## **Art. 70 Constitution**

- (1) *The Länder shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation.***
  
- (2) *The division of authority between the Federation and the Länder shall be governed by the provisions of this Basic Law concerning exclusive and concurrent legislative powers.***

# Constitutional Provisions on Legislative Powers

- **Precedence** for State legislation (rather theoretical)  
[Art. 70]
- **Exclusive** legislative powers of Federation  
[Art. 71 and list in Art. 73]
- **Concurrent** legislative powers of Federation and States  
according to list  
[Art. 72 and list in Art. 74]

## Bills and Procedures

- Bills may be introduced in the Bundestag by the **Federal Government**, by the *Bundesrat*, or from the floor of the *Bundestag* [Art. 76 (1)]
- Within three weeks after receiving an adopted bill, the *Bundesrat* may demand that a committee for **joint consideration** of bills, composed of Members of the *Bundestag* and of the *Bundesrat*, be convened [Art. 77(2)]
- Different procedures for Bills that require **consent** of Bundesrat and those that do not [Art. 77(2a)-(4)]



# Résumé

- 16 Länder with very different size and economic power
- Since 1949 well settled federal structure in FRG
- In general, most constitutional provisions are uncontested
  
- In reality, States much „weaker“ than provided by constitutional framework due to, *inter alia*:
  - Small size of some States
  - Lack of own financial resources
  - Delegation of many tasks by federal legislation with financial compensation from Federation
  - Unsound and „irrational“ distribution of legislative powers, especially since last reforms (*Föderalismusreform*)

## More information

**Slides** can be downloaded at:

[www.hwr-berlin.de/prof/clemens-arzt/lehre/](http://www.hwr-berlin.de/prof/clemens-arzt/lehre/)

Go towards end of page: „Lectures at Symbiosis Law School“

**German Constitution** in English:

[www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html)

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